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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	CC Docket No. 96-61
	)	
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	

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To: The Commission

COMMENTS OF COLUMBIA LONG DISTANCE SERVICES, INC.

Columbia Long Distance Services, Inc. ("CLDS"), by its attorneys, hereby comments on the Notice of Proposed Rulemaking, FCC 96-123, issued in the above-captioned docket on March 25, 1996 ("Notice"). Pursuant to the deadlines established by the Notice, comments concerning geographic rate averaging and rate integration (Section VI of the Notice) are due today. CLDS has had a long-term interest in the issue of rate integration as it relates to Guam and other U.S. territories in the Western Pacific Ocean.[1/] Its comments in this proceeding are limited to this matter.[2/]

1/ CLDS is authorized to provide international long distance service on Guam. See Columbia Long Distance Services, Inc., 9 FCC Rcd 6402 (1994). Its affiliated company, Columbia Communications Corporation ("Columbia") is the operator of C-band satellite transponder capacity on NASA's Tracking and Data Relay Satellite System ("TDRSS"), including the Pacific region satellite located at 174° West longitude. Columbia is authorized to provide a full range of satellite telecommunications services connecting Guam and other Western Pacific U.S. territories with the U.S. mainland, and Alaska and Hawaii, using this satellite capacity. See Columbia Communications Corp., 7 FCC Rcd 6616 (1992).

2/ CLDS has previously filed comments concerning petitions for rulemaking seeking the

(continued...)

I. The Requirements Of Section 254(g) Of The Communications Act.

In the Notice, the Commission states that the Telecommunications Act of 1996 (the "1996 Act"),[3/] adopting Section 254(g) of the Communications Act, requires it to adopt rules mandating that each interstate, interexchange telecommunications service provider offer integrated rates to its subscribers, such that the rates charged to its subscribers in any one State are "no higher than the rates charged to its subscribers in any other State."[4/] As the Notice also notes, the Communications Act already provides that the term "State" includes "the District of Columbia and the Territories and possessions" of the United States.[5/] Thus, the terms of the 1996 Act appear to require that all such Territories not currently subject to rate integration must be brought into the Commission's rate integration scheme in some fashion.

In furtherance of implementing this requirement, the Commission has requested that interested parties provide comment "on appropriate mechanisms to implement rate integration" for currently non-integrated Territories and possessions, specifically including Guam and the Commonwealth of the Northern Mariana Islands

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[2/](...continued)
implementation of domestic rate integration for Guam and the Commonwealth of the Northern Mariana Islands. See Comments of CLDS, File Nos. AAD-95-84 thru 95-86, filed August 15, 1995. The Commission states its belief in the Notice that "these petitions would become moot when we adopt rules implementing new Section 254(g)." See notice, FCC 96-123 slip op. at 42 n. 170.

[3/] See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

[4/] Notice, FCC 96-123, slip op. at 41 (¶ 76).

[5/] Id. at 41-42 (¶ 77).

("CNMI").[6/] CLDS believes that the Commission must tread with special care in extending rate integration to these Western Pacific possessions in order to avoid establishing rigid regulatory requirements that will redound to the detriment of telecommunications users on these islands. Imprudent application of regulatory schemes that do not fit these unique telephone markets could have a long-lasting negative impact on service by stifling the growth of true competition.

In making decisions in this docket, the Commission should focus on the essential purpose of rate averaging and rate integration, which is to prevent carriers from offering preferred rates to attract customers on lucrative, high volume routes, while charging much higher rates to users of more isolated, low volume routes. For example, absent averaging, carriers might impose higher charges on calls between Barstow, California and Johnstown, New York than on calls between Los Angeles and New York City, despite the fact that the facilities used are equivalent and the distance traversed is approximately the same. Averaging of rates ensures that charges are not disproportionately imposed upon remote locations *when the means used to reach these locations are the same as those used to serve telephone customers generally*. Rate averaging has never been adopted for a reason other than ensuring equal treatment of customers that can be served by the same types of transmission facilities.

6/ Id. at 42 (¶ 77).

II. Mandated Rate Integration For Western Pacific Territories Would Be Fundamentally Inconsistent With The Rationale Underpinning Prior Commission Extensions of This Policy.

As the Commission observes in the Notice, it was the advent of domestic satellites that first permitted the Commission to extend the domestic geographic rate averaging policy to off-shore areas that were not "integrated" with the terrestrial wired telephone network.[7/] The premise for this new rate integration requirement was the Commission's mandate that domestic satellites provide footprint coverage of the continental United States ("CONUS") ***plus*** Alaska, Hawaii, Puerto Rico and the Virgin Islands. As the Commission stated in the Notice:

> [B]ecause the cost of providing interexchange service over satellite facilities did not vary with distance, there was a sound economic basis to support the integration into the domestic rate pattern of communications services between non-contiguous U.S. states and territories and the forty-eight contiguous states.[8/]

In short, the actual existence of a distance insensitive means of telecommunication was the fundamental factor in the Commission's decision in Domsat II. The Commission determined that when a point can be reached by distance insensitive domestic satellites, that point should be included in the domestic rate scheme — regardless of whether this

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7/ See Establishment of Domestic Communications Satellite Facilities, 35 F.C.C.2d 844, 856-857 ("Domsat II"), aff'd on recon., 38 F.C.C.2d 665 (1972), aff'd sub nom., Network Project v. F.C.C., 511 F.2d 786 (D.C. Cir. 1975).

8/ Notice, FCC 96-123, slip op. at 40 (¶ 75).

means is actually used to provide service in a particular instance.[9/] The Commission did not determine, however, that all domestic points must be governed by integrated average rates regardless of whether distance insensitive means exist for the provision of service.

Because there is no current distance insensitive means of telecommunications transport available for Guam and CNMI, the cost of providing service to these markets remains directly related to their geographic location and distance from CONUS. The reasoning underlying the Commission's decision to extend rate averaging to Alaska and Hawaii, as well as Puerto Rico and the Virgin Islands, is therefore inapplicable to Guam and CNMI, *viz.*, there simply is no "sound economic basis" upon which to conclude that rates to and from the Western Pacific Islands should be integrated into the rate pattern that applies to points covered within the footprints of domestic satellites.

It must be recognized that the ability of Columbia and other U.S.-licensed satellite operators to provide service between the U.S. mainland and Guam is not equivalent to service available via "domestic" satellites, which cover all fifty states in

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9/ See Domsat II, 35 F.C.C.2d at 856-57; Competition in the Interstate Interexchange Marketplace, 5 FCC Rcd 2627, 2649 (1990), citing Policy and Rules Concerning Rates For Dominant Carriers, 4 FCC Rd 2873, 3132 (1989). Basing the policy on the least costly transmission method, the Commission thus encouraged carriers either to use that method, or to cut costs on existing routes.

addition to the integrated offshore points.[10/] While a satellite signal uplinked in Miami, Florida can be transmitted via a U.S. domestic satellite to a downlink facility in Anchorage, Alaska, no satellite that fully satisfies the U.S. domestic coverage requirements also provides coverage of Guam. For this reason, from many points in CONUS, no satellite carrier can reach Western Pacific points in the same manner that they serve other domestic locations — *i.e.*, via a single transmission, or "hop," from one domestic point to another. Instead, to transmit a signal from Miami, Florida to Agana, Guam, it must "hop" twice, first via an uplink to a domestic satellite and a downlink to another earth station facility in the United States (or elsewhere in North America), and then via an uplink to a Pacific Ocean Region satellite and a downlink to its final destination.[11/] This necessity is an immutable fact of the physics of the geostationary orbit — the curvature of the earth.

In establishing requirements under Section 254(g), the Commission should not ignore the fact that the circumstances of providing service to Guam and CNMI are completely different from those that have supported rate integration in the past. The

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10/ The recent regulatory change consolidating the policies applicable to domestic and international satellites has no impact on the physical capability of satellites to serve particular areas. See Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, FCC 96-14, slip op. (released Jamuary 22, 1996). Only satellites within the "domestic" portion of the orbital arc can comply with the requirement to provide service to all fifty states plus Puerto Rico and the Virgin Islands.

11/ The cost of transmission by undersea cable, either fiber optic or other type, is measured by the distance traversed — making it the most distance sensitive means of transmission.

means by which telecommunications traffic moves between the U.S. mainland, on one hand, and Guam and CNMI, on the other, remains fundamentally different from the means available for transmissions between other U.S. points. Because of the substantial difference in the means by which service is offered, differences in the method used to calculate prices are not discriminatory or otherwise inappropriate, they are simply necessary and reasonable.

Given these facts, the Commission should permit carriers to adopt differentiated rates based on the actual availability of distance insensitive means to serve a particular State or Territory. Those areas where such means are not yet available would constitute one common pool for rate averaging purposes, while those where distance insensitive transmission facilities are feasible and in operation would be another common pool. Only through such sensible, case-specific application of rate integration policies will the public interest be served.

III. Arbitrary Imposition Of Rate Integration For Guam And CNMI Would Undermine Competition And Damage The Long-Term Interests of Telecommunications Users In These Territories.

As a matter of policy, carriers should be able to set rates based on their actual costs of doing business, as any other approach is likely to have significant adverse consequences. For example, while adoption of full rate integration for Guam and CNMI might reduce costs to consumers in the short term, it would also have the effect of discouraging entry by new carriers. For this reason, consumers would be adversely affected in the long run by immediate integration of rates for Guam and

CNMI. New carriers would not seek to enter the Micronesian telephone markets if their potential profit margins are wiped out in advance by a government mandated pricing system that bears no logical relationship to market realities. Actual reduction of rates for service to Guam and CNMI will depend not upon arbitrary regulatory changes, but upon increased competition, which will force each competitor to implement the most cost-effective means of providing service, while at the same time spurring higher quality service.

Where rate integration makes sense in light of market conditions, it will promote competition, but where it is simply imposed without a reasonable basis, competition will inevitably suffer. CLDS is committed to the twin goals of lower costs and better service for long distance telephone customers on Guam and in the CNMI. These goals, however, will only be accomplished through the introduction of new competitive long distance service to the Pacific islands, and not through imposition of arbitrary new regulations. Mandated rate integration, where not supported by market factors, would cut against the grain of the pro-competitive, deregulatory goals underlying the adoption of the 1996 Act. Moreover, it would likely reduce competition in the Micronesian telephone markets in the short run and redound to the long-term disadvantage of telephone users, leaving them inadequately served.

Because service to Guam and CNMI remains entirely dependent upon distance sensitive transmission methods, reduced costs and improved services and features cannot be achieved by assuming this distance does not exist, and imposing

price mechanisms designed for fundamentally different market conditions. The Commission should not take any steps that would discourage increased competition. A fully competitive market remains the best means to produce lower costs and better service.

IV. Conclusion

Guam and CNMI can, and soon will, have telephone service that is both reasonably priced and feature rich, but these advances depend on expanded competition in the market, not expanded regulation. Accordingly, in implementing the requirements of Section 254(g) of the Communications Act, as amended by the 1996 Act, the Commission should take special care to establish rate integration policies that are explicitly geared to the immutable geographic separation of these points from the U.S. mainland. Guam and CNMI cannot be treated in precisely the same manner as

other domestic points, and the Commission should deal with them in a manner that ensures that carriers may establish rates for these points based on the true costs of providing service, while at the same time protecting telecommunications users from unreasonable discrimination.

Respectfully submitted,

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